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MAR 25 1998

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Access Charge Reform, Price Cap Review)	
for Local Exchange Carriers, Transport Rate)	CC Docket Nos. 96-262, 94-1,
Structure and Pricing, End User Common)	91-213, 95-72
Line Charge)	

**BELL ATLANTIC'S¹ OPPOSITION TO AND COMMENTS ON PETITIONS FOR
RECONSIDERATION OF FOURTH ORDER ON RECONSIDERATION**

I. Introduction and Summary.

Several petitioners here demand special treatment similar to requests that the Commission has previously rejected. They either ask to be exempted from contributing to universal service or seek funding for private non-common carrier state and school system networks. The Commission properly denied these requests in its earlier orders, and no new arguments have been presented that warrant a different result.

The Commission also should deny the requests to change the bandwidth of voice-grade service. This is not the appropriate proceeding in which to attempt to force local exchange

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

carriers to rebuild their local telephone networks. The bandwidth that the Commission specified properly preserved the status quo and should not be reconsidered.

Two issues in U S West's petition should be granted. The Commission should confirm that carriers and non-carriers alike that provide Internet access and internal connections are not subject to the lowest corresponding price requirements for these non-telecommunications services. It should also clarify that existing term-pricing provisions in federal tariffs are treated as "existing contracts" and may be reimbursed if they meet the same conditions as grandfathered contracts.

II. Special-Interest Exemption Requests Should Again Be Denied.

Several individual companies and trade associations continue to try to avoid their responsibilities to contribute to universal service.² Their attempts should again be rejected.

First, Amtrak and National Public Radio ask to be exempted from contributing to universal service. Neither denies that it provides interstate telecommunications services to others for a fee, however. And the Commission's Rules specify that such providers must contribute into the fund. 47 C.F.R. § 54.703(b) and (c). The Commission has already denied reconsideration of its requirement that such telecommunications providers must contribute, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, FCC 97-420, ¶ 276 (rel. Dec. 30, 1997) ("Order"), and these entities have not shown any reason to revisit that denial.

² National Railroad Passenger Corporation ("Amtrak"); National Public Radio, Inc.; Wireless Cable Association International, Inc. ("Wireless Cable Ass'n").

Second, the Wireless Cable Ass'n argues that "MDS [multipoint distribution service] licensees that lease capacity to wireless cable operators should be exempt from universal service contribution obligations." Wireless Cable Ass'n at 5. It argues that the Commission has exempted video programming distributors from the obligation to contribute, and that MDS licensees should be treated no differently. This is wrong. To the extent an MDS licensee elects common carrier status and offers telecommunications service, under the Act it must contribute to universal service, and the Commission has no authority to grant it an exemption. *See* 47 U.S.C. § 254(d) ("Every telecommunications carrier that provides interstate telecommunications services shall contribute ... to preserve and advance universal service."). The Commission's rules also require, under the principle of competitive neutrality, that non-carriers that offer telecommunications services to others for a fee, should also contribute. 47 C.F.R. § 54.703(b) and (c). There is no reason that an MDS provider that chooses a non-common carrier status but provides an identical telecommunications service as does a common carrier licensee, and therefore competes with the common carrier, should be exempted from contributing.

In addition, the Wireless Cable Ass'n appears to be arguing that an MDS licensee that provides a telecommunications service to a non-contributor is itself exempt from contributing. But this ignores the fact that all universal service fund contributions are based on end user revenues. And, because end users generally do not contribute directly into the fund, the logical consequence of the Wireless Cable Association's argument is that NO provider of interstate telecommunications service would have to contribute to the fund, since all provide services to non-contributors. Therefore, the Wireless Cable Ass'n would eliminate all universal service funding and undermine Section 254 of the Act, and its request should be denied.

III. Non-Carriers Are Ineligible to Receive Reimbursement for Telecommunications Services Provided to Schools and Libraries.

There is no legal or policy justification for reconsidering the finding that private state and school telecommunications networks that are not operated as common carriers may not recover from the universal service fund, as two petitioners request.³ As the Commission properly found, under the Act, only common carriers are eligible for reimbursement from the fund for telecommunications services. Order at ¶ 187, citing Section 254(h)(1)(B). It would be inconsistent with that statutory provision for the Commission to grant the reconsideration petitions and provide the requested reimbursement. Accordingly, the Commission should reiterate that only common carriers may receive universal service funding for telecommunications services and deny the petitions.

For the same reason, the Commission must deny the request to allow reimbursement for “high-quality voice, data, and video” services provided by non-telecommunications carriers.⁴ Contrary to the claims of the petitioners here, the services listed are the same types of telecommunications services that carriers routinely offer. They cannot reasonably be characterized as “advanced telecommunications and information services” under Section 254(h)(2)(A) which, the petitioners claim, can receive reimbursement when provided by non-carriers. Reimbursement for these services is, therefore, restricted to telecommunications carriers under Section 254(h)(1)(B).

³ Washington State Department of Information Services and Southern Educational Communications Association.

⁴ Lan Neugent and Greg Weisiger.

IV. The Commission Should Not Use This Proceeding to Redesign the Local Network.

Three petitioners ask the Commission to change the definition of “voice-grade service” in Section 54.101(a)(1) of the Rules to widen the required frequency response to a minimum of 300-3,500 Hertz.⁵ The Commission adopted a minimum bandwidth of 300-3,000 Hertz based upon current industry standards in order to “ensure that consumers receive voice grade access at levels that are consistent with Commission rules and are not incompatible with current industry guidelines.” Order at ¶ 16. There is no justification for changing that bandwidth, as the petitioners request.

This proceeding, which is to determine the proper method of funding universal service, is not the place to revamp the technical parameters of local exchange carriers’ networks nationwide. Nor is there a record upon which the Commission can base any change in the existing bandwidth parameters. Certainly, there is no support for a finding, which the petitioners’ request would require, that nearly all of the local telephone networks in the United States are technically inadequate, nor any evidence of the cost or benefits to the ratepayers of changing the bandwidth as the petitioners request.⁶ The Commission, appropriately, revised its earlier order when it realized that it had not preserved the status quo, and the bandwidth it adopted simply corrected that error. There is no justification for making the requested changes.

⁵ North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Washington Utilities and Transportation Commission.

⁶ The petitioners’ proposal would entail massive premature replacement of copper facilities with fiber.

V. The Commission Should Clarify Lowest Corresponding Price and Grandfathered Contract Provisions.

The Commission should grant U S West, Inc.'s ("USW's") request to clarify that non-telecommunications services – such Internet access and internal connections – are not subject to the lowest corresponding price provisions which set the bid ceiling for services provided to schools and libraries. USW at 4-7. Those services are not regulated, are provided by both telecommunications carriers and non-carriers, and are subject to intense competition. Individual prices are subject to negotiation and may vary widely. In some instances, inside wiring may be provided as part of a package with other unregulated products, such as customer premises equipment. *Id.* at 6-7. It may be nearly impossible to ascertain the lowest corresponding price under which a carrier provides such unregulated services. And it is likely to be completely impossible to determine the lowest corresponding price for a non-carrier, such as an electrical wiring contractor, that may provide telephone wiring as a package with unrelated electrical work. Accordingly, the lowest corresponding price provisions should not apply to non-telecommunications services, regardless of the provider.

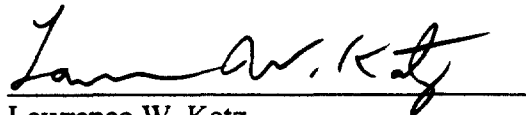
The Commission should also clarify that tariffed term pricing provisions that otherwise meet the requirements of "existing contracts" are eligible for universal service support. *Id.* at 10-13. The Commission grandfathered long-term contracts for services to schools, libraries, and rural health care providers that were signed prior to July 10, 1997 but included no similar grandfather provision for term tariff arrangements. In addition, it provided that contracts signed after July 10 are eligible for support only until December 31, 1998. *See* Order at ¶ 217. As USW points out, there is no justification for restricting this provision just to contracts. The

same policy should apply to term provisions that are in state or interstate tariffs that meet the same criteria.

VI. Conclusion

Accordingly, the Commission should address the pending reconsideration petitions as discussed above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

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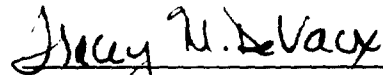
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March 25, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 1998 a copy of the foregoing "Bell Atlantic's Opposition to and Comments on Petitions for Reconsideration of Fourth Order on Reconsideration" was sent by first class mail, postage prepaid, to the parties on the attached list.



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